



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO: 7359 OF 2019

Between:

1. Transmission Corporation of Andhra Pradesh Ltd., (A.P.Transco) Vidyuth Soudha, Gunadala, Vijayawada, Krishna District Rep. by its Chairman and Managing Director,
2. The Chief Engineer, 400 KV, Construction, Vidyuth Soudha, Gunadala, Vijayawada, Krishna District
3. The Superintending Engineer, 400 KV, OMC Circle, Vidyuth Soudha, Gunadala, Vijayawada, Krishna District

...PETITIONER(S)

AND:

1. State of Andhra Pradesh rep.by its Principal Secretary, Energy Department, A.P. Secretariat, Amaravathi Velagapudi - 522 503, Guntur District
4. Sri Ch.Chandra Mouli, S/o Sri Suryanarayana, R/o 1-191, Guntupalli Village, Ibrahimpatnam Mandal, Vijayawada, Krishna District
5. Sri Ch. Venugopal Rao, S/o Sri Chandra Mouli, R/o 1-191, Guntupalli Village, Ibrahimpatnam Mandal, Vijayawada, Krishna District
6. The Collector and District Magistrate, Krishna District, At Machilipatnam, Krishna District.
7. Sri Ajay Jain, IAS, Principal Secretary, Energy Department, Government of Andhra Pradesh, A.P. Secretariat, Velgapudi, Guntur District.
8. Sri S. Subramanyam, Director Transmission, APTRANSCO, Vidyuth Soudha, Gundala, Vijayawada

(Respondents 4 to 6 are not necessary parties to this writ petition)

...RESPONDENTS

Counsel for the Petitioner(s): N SIVA REDDY(SC FOR APTRANSCO)

Counsel for the Respondents: GP FOR ENERGY (AP)

The Court made the following: ORDER

**HON'BLE SRI JUSTICE M.GANGA RAO****WRIT PETITION No.7359 of 2019****ORDER:**

The Transmission Corporation of Andhra Pradesh through its officials filed this writ petition questioning the order, dated 30.06.2018, passed in O.P.No.51 of 2017 by the A.P. Electricity Regulatory Commission, Hyderabad, [for short, 'the Commission'] wherein and whereby the Commission allowed the above OP filed by respondent Nos.2 and 3 herein seeking compensation and damages for laying the high tension electrical lines across their lands in Sy.No.41/1 of Guntupalli, Krishna District, mainly contending that the A.P Electricity Regulatory Commission has no jurisdiction to entertain the said OP.

The brief facts of the case are that respondents 2 & 3 herein filed the above OP before the Commission against the petitioners herein and respondents 4 to 6 herein, under Rule 13(1)(2) of the Andhra Pradesh Works of Licensee Rules, 2007 read with Section 19 (1) (a) and (b) of the Electricity Act, 2003 [for short, 'the Act'], seeking a direction to the Collector and District Magistrate - 4th respondent herein to fix the compensation for loss of crop, loss of land value with interest from 03.02.2009, the date of construction of towers and lines as part of Nunna to Srisailam, VTPS/LILO, 400 KV Double Circuit High Tension Towers and lines over an extent of



Ac.0.31 cents of land situated in Sy.No.41/1 of Guntupalli, Krishna District, and to award monthly remuneration to both the respondents 2 & 3 herein from 13.03.2019, towards loss of livelihood, to conduct an enquiry into suppression of the A.P Works of Licensee Rules, 2007 [for short, 'the Rules'] by the respondents 5 & 6 herein fixing personal liability on them for damages and other consequences etcetera. On receipt of the notice from the Commission, the AP Transco filed counter affidavit denying the allegations made in the affidavit filed in support of OP.No.51 of 2017 contending that the respondents 2 & 3 herein are not entitled to any compensation or damages and prayed to dismiss the OP. However, the Commission allowed the OP on 30.06.2018 mainly directing the Collector and District Magistrate - 4th respondent herein to fix the amount of compensation or of an annual rent or of both which should be paid by the licensee, i.e., Transmission Corporation of Andhra Pradesh Limited to the owner/occupier of the land, i.e., the petitioners therein with other directions. Being aggrieved by the said order as being arbitrary and contrary to the provisions of the Act and the Rules made thereunder and the provisions of the Telegraph Act, 1885, the present writ petition came to be filed.

Sri N. Siva Reddy, learned counsel for the petitioners would contend that the 1st petitioner is a company incorporated under the provisions of Indian Companies Act, 1956 and it is fully owned by the 1st respondent –



Government. It is engaged in the business of transmission of power and it is a licensee within the meaning of Section 2(39) of the Act. The petitioner obtained license to transmit electricity as a transmission licensee under Section 14 of the said Act. The 1st petitioner has formulated a scheme for laying of two numbers double circuit lines for Line-In and Line-Out (LILO) of Nunna – Srisailam/Narasaropet 400 KV DC line to VTPS (Stage-IV) and it was notified in the A.P Gazette bearing No.211, dated 17.07.2007. The said scheme was formulated for reduction of Extra High Tension (EHT) losses, improvement of voltage profiles and to meet the additional load demand of the composite State of Andhra Pradesh. By the said notification, objections were invited from any person interested and they can file their objections before the Chief Engineer, Construction, 400 KV within two months from the date of publication of the notification. The notification was published in two daily newspapers, i.e., Hindu and Vaartha on 29.05.2007 and 30.05.2007 respectively. But no objections were received from anybody including the respondents 2 & 3 herein to the said notification. The execution of the scheme was started in the month of December, 2008, and the entire scheme was commissioned on 27.07.2009 in full shape. The lines were charged on that day and continued to function from then onwards. Under the scheme, nearly 18 new towers were planned in the alignment of the said scheme. The tower



location Nos.5 to 13 were laid in the dismantled 220 KV Line Corridor. The 220 KV line corridor has already been passing through the land of respondents 2 & 3 herein under the dismantled 220 KV line which was originally laid on 29.09.1982. Hence, the contention of the said respondents that lines are laid for the first time in 2009 is false and incorrect. The tower location No.7 was laid in the land of the petitioners under the notified scheme. The tower was erected in the land of the respondents 2 & 3 herein over an extent of Ac.00.0484 cents (which comes to nearly 5 cents). The execution of the work of tower foundation was started on 22.02.2009 and completed by 07.03.2009. Respondents 2 & 3 herein have not raised any objection for the said work during that time. When the work was carried out, there was no standing crop on the land and there were no trees in that land. The work was taken up after the paddy crop was harvested and the land was vacant. The 3rd respondent herein along with 17 others filed W.P.No.29161 of 2008 before this Court seeking a direction to the A.P Transco authorities not to erect poles or lay electrical lines through their lands. The said writ petition was dismissed for default by order, dated 18.12.2015. Thereafter, respondents 2 & 3 filed OP.No.51 of 2017 before the Commission seeking a direction to the District Collector, Krishna, to fix the compensation to loss of value of the land and interest on the land value from 2009 onwards. Their further contention is that the AP



Transco has violated Rule 3(1)(a) and 3(2) of the Rules. The said Rules were framed by the A.P Transco duly following the Works of Licensees Rules, 2006 framed by the Government of India in exercise of its power under Section 176(2)(e) read with Section 67(2) of the Act. The said Rules were published in the A.P Gazette part – I Extraordinary, dated 04.04.2007. Though the Rules were framed, the Government has not authorized any officer by a special order as required under the said Rules. As such, these Rules have not come into operation in the absence of such authorization. When the matter was brought to the notice of the Government by APERC, the Government issued G.O.Ms.No.6, Energy, Infrastructure & Investment Department, dated 06.03.2017, appointing the District Collectors to exercise the powers and perform the duties under the A.P Works of Licensees Rules, 2007. As such, the Rules have come into operation only from 06.03.2017 and they were not given retrospective effect. Hence, the impugned order passed by the Commission directing the District Collector to fix the amount of compensation or annual rent or both to be paid by the Transco to the owners of the land in respect of the work of the Licensee carried out in an area of 31 cents in Sy.No.41/1 of Guntupalli village, under Rule 3 (4) of AP Works of Licensee Rules, 2007, and also determine the full compensation for any loss or damage incurred by those owners by reason of default of the AP Transco in complying with any of the



statutory rules under Rule 13 of the said Rules is arbitrary and contrary to the judgment of this Court in **Devisetty Ramaswamy v. Chief Engineer** [2013(4) ALD 88] wherein this Court held that under Section 164 of the Electricity Act, 2003, the Rules, 2006 framed under Section 67 of the Act of 2003 have no application in the event of exercise of powers under Section 164 of the Act by the AP Transco. Hence, the impugned order is passed without jurisdiction by the Commission and arbitrary and illegal.

Respondent no.2 filed counter denying the averments of the affidavit filed in support of the writ petition stating that APERC is constituted under Section 82 of Electricity Act, 2003, and entrusted with vast powers under Section 86 of the said Act and the AP Transco is a licensee. The Commission has vast powers. Commission is a quasi judicial body entrusted with powers to resolve even inter se disputes between various persons. The provision of Section 67(4) of the Act confers power upon the appropriate Commission to resolve dispute between the land owner and licensee. This power is untrammelled and is not impaired by Rules, 2007, framed under Section 67(2). Rules framed under Section 67(2) would govern the working of the licensee and not the Commission. The petitioners in the OP are entitled for compensation for use of the petitioners land for erecting electricity transmission towers in their land. Due to erection of towers the use of the lands was deprived and value of the



land was diminished. The Commission rightly allowed the application directing the District Collector, Krishna, to pass appropriate orders for payment of compensation and damages to the petitioners therein.

Sri P. Chengal Reddy, learned counsel for appearing respondent No.2, while reiterating the averments of the counter, would contend that it is not in dispute that the petitioners herein have erected electrical tower for transmission of power in the land of the respondents 2 & 3 herein measuring Ac.0.31 cents situated in Sy.No.41/1 thereby deprived the use of the land and value of the land was diminished for which the respondents 2 & 3 herein were entitled to payment of compensation as per the provisions of Electricity Act, 2003, and Telegraph Act, 1885, and the petitioners herein have not responded for various representations for payment of compensation. The 3rd respondent herein filed WP.No.29161 of 2008 before this Court along with WPMP.No.38100 of 2008. On 31.12.2008, this Court granted interim order not to erect poles/towers in the lands of the petitioner therein (respondent No.3 herein) without following due process of law. The said interim order was in force from 31.12.2008 till the disposal of the W.P.No.29161 of 2008 on 18.12.2015, however, the petitioners herein proceeded and erected towers. The petitioners herein filed complaint against the 2nd respondent and others stating that they were obstructing the laying of the



electrical lines, the same was registered as Crime No.47 of 20018 and numbered as C.C.No.1485 of 2009 on the file of the IV Additional Chief Metropolitan Magistrate, Vijayawada. The same was quashed by this Court on 31.08.2017 in Criminal Petition No.2808 of 2010. The respondents 2 & 3 herein approached the Commission and the Commission considered and passed a reasoned order after carefully considering the rival contentions and directed that the District Collector, Krishna, authorized officer shall fix the compensation payable to the respondents 2 & 3 herein after considering their representations, having held that there is no delay in approaching the Commission for direction to the respondents therein to pay the compensation. He further contended that the Commission was constituted under Section 86 of the Electricity Act, 2003 and has every power to entertain the application of the petitioners and pass appropriate orders for payment of compensation by the competent authority – District Collector. There is no error of fact and error of law which warrants interference of this Court in the impugned order exercising power under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

This Court has carefully gone through the impugned order passed by the Commission. Respondents 2 & 3 herein filed the OP to direct the Collector and District Magistrate, Krishna – 4th respondent therein to fix the compensation for



loss of land value with interest from 03.02.2009, the date of construction of towers and lines over extent of Ac.0.31 cents of the land of the respondents 2 & 3 herein in Sy.no.41/1 of Guntupalli, Krishna District. The petitioners herein also filed counter *inter alia* denying the claim of respondents 2 & 3 herein for payment of compensation. The Commission based on the pleadings framed the following points for consideration.

1. Whether the petition is barred by time?
2. Whether the petitioners are entitled to have any compensation determined by the District Collector?
3. Whether the petitioners are entitled to any remuneration for their livelihood?
4. Whether the AP Transco or its officers should be made liable for any consequences for suppression of the Andhra Pradesh Works of Licensees Rules, 2007?
5. To what relief?

The Commission, after elaborately considering the entire material, answered point no.1 in favour of respondents 2 & 3 herein, who are the petitioners in the OP stating that the petition is not barred by time. With regard to point no.2, the Commission elaborately considered the material on record and held that they are entitled to have compensation as per the statute and the statutory rules determined the District Collector, Krishna and answered the said point also in favour of the petitioners therein. With regard to point no.3 it was held that the claim of the petitioners therein to any remuneration for their livelihood has to be determined by the authorized officer under Rule 13 of the Rules along with determination of compensation in respect of the land. In respect of point no.4, it was held that the request for any



action against respondents 1,5 and 6 therein does not appear to be within the jurisdiction of the Commission, more so, in the said OP. With regard to point no.5, it was held that in the written submissions of the respondents 2 & 3 herein filed on 24.02.2018 further questions of fact are raised which are not part of the pleadings of the parties and in any view, they have no impact on the determination of the questions in controversy between the parties as per their pleadings. Ultimately, the OP was allowed. The operative portion of the order passed in the OP reads as under:

(a) The District Collector, Krishna District being the authorized officer under G.O.Ms.No.6, Energy, Infrastructure & Investment (Power.III) Department, dated 06.03.2017 shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of an annual rent or of both, which should in his opinion, be paid by the licensee i.e., Transmission Corporation of Andhra Pradesh Limited to the owner / occupier of the land in question i.e., the petitioners in respect of the work of the licensee carried out in an area of Ac.0.31 cents in S.No.41/1 of Guntupalli Village, Ibrahimpatnam Mandal, Krishna District as part of the work of the 2 Double Circuit lines for Loop-in and Loop-out of Nunna / Srisailam / Narasaraopeta 400 KV Double Circuit line to VTPS (Stage-IV) (Tower No.7 and lines) under Rule 3 (4) of the Andhra Pradesh Works of Licensees Rules, 2007 and also determine the full compensation for any loss or damage incurred by the petitioners by reason of default of Transmission Corporation of Andhra Pradesh Limited in complying with any of the statutory rules under Rule 13 of the said Rules:

(b) Such fixing and determining the compensation under Rule 3 (4) and Rule 13(1) of the Andhra Pradesh Works of Licensees Rules, 2007 shall be completed by the District Collector, Krishna District as per the prescribed procedure on merits in accordance with law within 6 (six) months from the date of communication of this order;

(c) The Transmission Corporation of Andhra Pradesh Limited shall pay any compensation



so fixed and determined by the District Collector, Krishna District within 3 (two) months from the date of communication of the orders of the District Collector, Krishna District to it;

(d) The other prayers of the petitioners for action in respect of the criminal proceedings against the 2nd petitioner or non-communication of the Andhra Pradesh Works of Licensees Rules, 2007 against any of the respondents or officers of the Transmission Corporation of Andhra Pradesh Limited are not granted, due to such reliefs being beyond the scope of the inquiry under the statutory rules herein or the jurisdiction of the Commission there under, apart from the absence of merits;

The contention of the counsel for the petitioners herein is that the impugned order is passed without jurisdiction, contrary to the provisions of Sections 67, 64 and 165 of the Electricity Act, 2003 and Sections 10, 16(1) and 17 of the Telegraph Act, 1885. Section 67 of the Act deals with the provision as to opening up of streets and railways etcetera. The Section states that the licensee may carry out various works mentioned in sub section (1) (a) to (e) of Section 67 as per certain terms and conditions of the licence. Sub section 3 of Section 67 states that a licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him. Clause 4 of Section 67 states that where any difference or dispute (including amount of compensation under sub section 3) arises under this section,



the matter shall be determined by the Appropriate Commission.

The other contention of learned counsel for the petitioners herein is that the OP is not maintainable and respondents 2 & 3 are not entitled for compensation. In support of his contention, he placed reliance on the judgment in **Devisetty Ramaswamy v. Chief Engineer** (supra). But the decision is not helpful to the petitioners' case, however, considering the fact situation, the learned Judge held that no notification in respect of the scheme and no prior notice or opportunity of hearing to the owners of the land is required before installation of the electrical tower in the land of the owners and that the petitioners therein - land owners whose land is being proposed for erection of electrical towers are not entitled for an order to stop the erection of electrical towers for transmission of the electricity and that the land owners are only entitled for compensation after erection of the towers only. While dealing with the grievance of the petitioners therein, this Court held that the petitioners are not entitled for any direction from this Court to stop the erection of the towers and further observed in paragraph 24 of the cited judgment as follows:

“Further, per the observations of the Supreme Court in para (9) of LIVISHA6, the petitioner cannot assert that his entire land should be acquired. Pertinent to note, Section 165 of the Act of 2003 requires acquisition of the affected land under the provisions of the Land Acquisition Act, 1894 only upon the recommendation of the appropriate



Commission i.e., the Andhra Pradesh Electricity Regulatory Commission. Admittedly, no such recommendation was made in the present case. The quantum of the compensation to be paid for the loss caused to the owner, be it in terms of diminution of the value of the lands or the actual damage caused to the lands, crops and trees, would have to be determined only after the laying of the lines/towers, as is clear from the observations of the Supreme Court in para (10) of LIVISHA6, extracted supra. Separate machinery is provided in the event the owner of the land concerned is dissatisfied with the compensation awarded. Perceived inadequacy of compensation cannot therefore be a reason to stall the work at the grounding stage.”

A reading of Section 165 of the Act requires acquisition of the affected land under the provisions of the Land Acquisition Act, 1894 only upon the recommendations of the appropriate Commission, that is, APERC. This Court in the above referred case at para 24 of above judgment also reiterated same thing. Admittedly, in the present case, the Commission directed the District Collector, Krishna – competent authority under Sections 10 and 16 of the Telegraph Act, 1885 to fix the amount of compensation or annual rent or both payable to the respondents 2 & 3 who are the land owners by the Transco. The further contention of the petitioners’ counsel is that even though the Rules were published in the Gazette on 04.04.2007, the said Rules came into force only from 06.03.2017 on the appointment of authority, the District Collector, to exercise power under the Rules does not merit consideration as the date of publication of the Rules deemed to be in the knowledge of the person. In the considered view of this Court, the impugned orders passed by the Commission



could not be said to be in violation of the provisions of Section 67, 164 & 165 of the Electricity Act, 2003 and works of Licensee Rules, 2006 & 2007 and do not warrant interference of this Court.

Accordingly, the Writ Petition is dismissed. No order as to costs.

Consequently, Interlocutory Applications, if any, pending shall stand closed.

M.GANGA RAO, J

Date: 30.01.2020

Note: LR Copy to be marked.

B/o

Sdp/Vjl



THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7359 OF 2019

Date: 30.01.2020

Sdp/vjl